

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Case No. 07cr3160-DMS (BLM)
12 Plaintiff,)
13 v.) **ORDER GRANTING IN PART AND**
14 MIGUEL ANGEL ROSAS-LEON,) **DENYING IN PART DEFENDANT'S**
15 Defendant.) **MOTION FOR MISCELLANEOUS**
) **RELIEF**

18 On December 17, 2007, stand-by counsel for Defendant Miguel Angel
19 Rosas-Leon requested a status hearing to permit Defendant to raise
20 concerns he had regarding his ability to represent himself. The Court
21 held the requested status conference the following day. Defendant
22 stated several concerns regarding his ability to use the telephone
23 service at the Metropolitan Correctional Center ("MCC") to contact
24 potential witnesses. The Court advised Defendant that he had to make
25 his arguments in writing and file them as motions. The Court granted
26 Defendant's request to file his motion in a shortened time frame and set
27 the hearing for December 20, 2007.

28 Attorney Nellie Torres Klein appeared at the December 18th hearing

1 on behalf of the MCC and submitted a declaration from Warden Paula
2 Jarnecke explaining the MCC's telephone system and the accommodations
3 that have been made for Defendant because he is representing himself.
4 Doc. No. 13. Warden Jarnecke stated that Defendant has been provided
5 unmonitored legal calls to his advisory counsel. Id. at 2. She further
6 advised that Federal Bureau of Prisons' policy doesn't permit
7 unmonitored calls to non-lawyers and that such calls "would be
8 detrimental to the safe and secure operation of the institution." Id.
9 at 2-3. Warden Jarnecke also advised that there "is no mechanism or
10 procedure for permitting free telephone calls on the [monitored] system
11 utilized by the inmates." Id. at 3.

12 On December 19, 2007, Defendant, acting *pro se* and with the
13 assistance of stand-by counsel, filed a Motion for Miscellaneous Relief
14 in which Defendant requested permission "to telephone his witnesses
15 without charge to him or the witnesses." Doc. No. 15 at 1. Defendant
16 stated that he did not object to monitoring of his phone calls, provided
17 that communications pertaining to his trial strategy are not disclosed
18 to the government. Id. The United States did not file an opposition.

19 On December 20, 2007, the Court heard oral argument on Defendant's
20 motion. During the hearing, Defendant revised his argument and asserted
21 that he wanted free unmonitored telephone calls like he had the last
22 time he represented himself. Doc. No. 20 at 13-20. The attorney
23 representing the United States requested an opportunity to respond in
24 writing to Defendant's motion. Id. at 2. As a result, the Court issued
25 a tentative ruling. The Court explained that a defendant who is
26 representing himself has the right to contact potential witnesses but
27 that there is no authority for Defendant's argument that he is entitled
28 to free unmonitored phone calls to potential witnesses. See Doc. No.

1 15 at 2 (cases cited by Defendant do not mandate such access). The
2 Court analogized Defendant's self-representation to the representation
3 provided by attorneys appointed pursuant to the Criminal Justice Act
4 ("CJA") in which the CJA attorneys are entitled to reimbursement for
5 reasonable expenses. Accordingly, the Court tentatively ruled that
6 Defendant's telephone calls to his potential witnesses would be made on
7 monitored telephone lines for security reasons but that the United
8 States Attorney's Office would not be able to obtain information about
9 the substance of Defendant's conversations via subpoena. Doc. No. 20
10 at 11-12. Further, if Defendant wants to seek reimbursement for any of
11 his telephone calls, Defendant must provide to the undersigned judge the
12 names and telephone numbers of the potential witnesses as well as an
13 explanation of how each witness may contribute to Defendant's defense.
14 Id. at 7, 13.

15 Despite the government's request, the United States did not file
16 an objection to Defendant's motion nor a response to the Court's
17 tentative ruling. Defendant also did not file an objection to the
18 Court's tentative ruling. Accordingly, on December 27, 2007, the Court
19 affirmed its prior tentative ruling. Doc. No. 19 at 2.

20 For the reasons set forth above and in court, the Court issues the
21 following rulings regarding Defendant's telephone use at the MCC:

22 1. Defendant may make unmonitored telephone calls to his stand-by
23 counsel;

24 2. Defendant may make monitored telephone calls to potential
25 witnesses. The United States Attorney's Office may not obtain access
via subpoena to the substance of Defendant's monitored telephone calls
27 to potential witnesses. If the United States Attorney's Office wants
28 access to the substance of Defendant's telephone calls to potential

1 witnesses, it must apply to the undersigned judge.

2 3. If Defendant wants reimbursement for any telephone calls made
3 to potential witnesses, Defendant must submit to the undersigned judge
4 in writing the names and addresses of the potential witnesses, as well
5 as an explanation of each person's relationship to Defendant's defense.
6 All such requests will be filed under seal. If the undersigned judge
7 approves the request, Defendant may seek reimbursement for a reasonable
8 number and length of calls to each witness.

9 IT IS SO ORDERED.

10 Dated: January 9, 2008



11 BARBARA L. MAJOR
12 United States Magistrate Judge

13 cc: Defendant
14 All Counsel
15 Nellie Torres Klein,
16 Senior Counsel, MCC

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